IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL APPLICATION NO.238 OF 2007

IN

FAMILY COURT APPEAL NO.32 OF 2003

Pradeep Raghunath Penkar : Appellant.

versus

Shweta Pradeep Penkar & Anr. : Respondents.

Mr.R.K.Mendadkar for the appellant.

Mr.V.R.Shah for Respondent No.1

CORAM : J.N.PATEL &

A.A.SAYED, JJ.

DATED : OCTOBER 15, 2007.

P.C.

1. Heard. Learned counsel for the applicants submits that the application for restoration could not be made in time as the financial condition of the applicant is not good

and, therefore, delay may be condoned and the order dated 4th September 2006 dismissing the family court's appeal be set aside and the matter may be restored to file.

2. We need not reiterate the facts and circumstances which led to the dismissal of the appeal by this Court as it is a matter of record. But one thing is apparent that the appellant is not diligent in prosecuting the matter and further there is no good and sufficient reason set out in the application for condoning the delay and restoring the appeal. In spite of these adverse circumstances, in order to give a fair opportunity to the applicant, We inclined to condone the delay and restore the appeal but subject to costs of Rs.10,000/- and further on the condition that the applicant would clear all the arrears of maintenance due and payable to the child which was granted by the family court at the rate of Rs.700/- per month on or before 30th October 2007 and shall continue to pay maintenance regularly with effect from 1.11.2007 by paying it on 10th of each month. In so far as costs of Rs.10,000/- is concerned, that is to be paid on or before 30th October 2007 and it shall

be a condition precedent. We make it clear that if the costs of Rs.10,000/- is not paid on or before 30th October 2007, either by drawing a cheque in favour of non-applicant/wife or by depositing the same in this Court with intimation to the wife, this application would stand rejected without further reference to this Court. In case, the applicant complies with the order, appeal shall be listed for hearing in the week commencing from 3rd December 2007. The application stands disposed of accordingly.

[A.A.SAYED,J] **[J.N.PATEL,J]**